IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: T.M.	:	APPEAL NOS. C-160239 C-160240
	:	C-160241
		TRIAL NOS. B-15-4475X
	:	B-15-4476X B-15-4477X
	:	
		JUDGMENT ENTRY.
	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Appellant T.M. was adjudicated a delinquent child on charges of cruelty to animals in violation of R.C. 959.13, cruelty to a companion animal in violation of R.C. 959.131, and criminal trespass in violation of R.C. 2911.21. In two assignments of error, T.M. challenges his adjudications on the grounds that (1) they were not supported by sufficient evidence and were against the manifest weight of the evidence, and (2) he was denied the effective assistance of trial counsel.

The evidence at trial showed that on November 1, 2014, T.M. and his brother T.T. were playing with a younger neighbor named K.M. near Sherry Mills's home. At some point, the boys decided to ascend Mills's fence and enter Mills's yard, without permission. T.M. and T.T. hoisted K.M., who needed assistance due to his size, over the fence first. The older boys followed, and proceeded to beat, kick, and stab Mills's very large dog, inflicting wounds that later caused the dog's death. Although T.M. and T.T. denied the charges, nine-year old K.M. was unequivocal in his identification of the brothers as the

assailants. The magistrate who presided over the trial found K.M. to be the more credible witness. Upon review of T.M.'s objections, the trial court also found K.M.'s testimony "absolutely compelling" in light of the corroborating evidence, recognizing, however, that K.M. was confused as to some of the details of the assault.

We overrule the first assignment of error. First, after viewing the evidence at trial in the light most favorable to the state, any rational trier of fact could have found the essential elements of the offenses proven beyond a reasonable doubt. *See In re Washington*, 75 Ohio St.3d 390, 392, 662 N.E.2d 346 (1996).

And, second, we find nothing in the record of the proceedings below to suggest that the trial court, in resolving the conflicts in the evidence adduced on the charged offenses, lost its way and created such a manifest miscarriage of justice as to warrant the reversal of the adjudications. *See In re Shad*, 1st Dist. Hamilton Nos. C-080965 and C-081174, 2009-Ohio-3611, ¶ 15, citing *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). Although T.M. maintains that K.M. was not credible, we note that the weight and credibility of the evidence are best left to the trier of fact. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus; *In re Shad* at ¶ 17. Here, the evidence does not weigh heavily against the adjudications, and we are not presented with the exceptional case where a new trial should be granted. *See Thompkins* at 387.

Similarly, we overrule the second assignment of error, as the ineffective-assistance-of-trial-counsel claim is not demonstrated in the record. T.M. essentially argues that trial counsel was ineffective because she failed to call two allegedly exculpatory witnesses. To succeed on a claim of ineffective assistance, the appellant must demonstrate that counsel's performance was deficient and this deficient performance resulted in prejudice. *In re Shad* at ¶ 25, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To demonstrate the requisite prejudice, T.M. must

show that the testimony of either of these alleged witnesses would have " 'significantly assisted the defense and that the testimony would have affected the outcome of the case.' " *In re Shad* at ¶ 26, quoting *State v. Jones*, 12th Dist. Butler No. CA2001-03-056, 2002-Ohio-5505, ¶ 22.

But T.M.'s claim is based purely on the speculation of T.M.'s guardian, expressed at the objection hearing, that two individuals, only one of whom had been allegedly made known to defense counsel, may have presented exculpatory testimony. This speculation is not sufficient to succeed on an ineffective-assistance claim.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 9, 2016
per order of the court _____.
Presiding Judge